

Title: AUTHORIZING THE CHIEF EXECUTIVE OFFICER, THE CHIEF FINANCIAL OFFICER AND BOARD CHAIR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH THE CITY OF CLEVELAND.

The Chief Executive Officer of the Cleveland Municipal School District presents the following resolution for adoption:

WHEREAS, this Board previously obtained appraisals of various former school sites that are no longer needed for school district purposes; and

WHEREAS, the District offered those sites to Charter School Operators at the fair market appraised value and the offers were not accepted for the sites identified in the proposed draft Development Agreement (See Attachment A); and


WHEREAS, the District engaged with the City of Cleveland on the potential redevelopment of those sites; and

WHEREAS, the City is willing to buy those sites pursuant to the authority of Ohio Revised Section 3313.41(C) from the District should it find a community supported appropriate development plan through a publicly issued request for proposals process; now, therefore be it


RESOLVED, that the Chief Executive Officer, Chief Financial Officer and Board Chair are authorized to enter into a Development Agreement with the City of Cleveland in the form provided in Attachment A and with such changes as the Chief Executive Officer shall negotiate and, be it further

RESOLVED, that the Chief Executive Officer, Chief Financial Officer and Board Chair are authorized to take any actions necessary to implement this resolution including the signing of quitclaim deeds and related real estate documents.

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION

By: 

Eric S. Gordon
Chief Executive Officer



Anne E. Bingham
Board of Education Chair

Derek M. Richey
Chief Financial Officer

Date: February 23, 2021

CHIEF FINANCIAL OFFICER'S CERTIFICATION

The foregoing is a true and correct copy of Resolution No. 2021-2901(B), hereinabove set forth, adopted by the Board of Education of the Cleveland Municipal School District at its regular meeting held on February 23, 2021. Written notice of the time and place of that regular meeting was served personally upon, or actually received by, each Board member at least two days in advance of such meeting; and notice of the time, place, and purpose of that meeting, and the manner by which the meeting was conducted, was, at least 24 hours in advance of the time of such meeting, given to and received by all news media and all persons that had heretofore requested notification of such meetings pursuant to Section 121.22 of the Ohio Revised Code, Sub. H.B. 404 and the procedures established by the Board for that purpose.

Dated: February _____, 2021

Chief Financial Officer
Cleveland Municipal School District, Ohio

ATTACHMENT A

DEVELOPMENT AND REAL ESTATE TRANSFER AGREEMENT BETWEEN THE CLEVELAND MUNICIPAL SCHOOL DISTRICT AND THE CITY OF CLEVELAND CONCERNING IDENTIFIED DISTRICT PROPERTIES

This Real Estate Transfer and Development Agreement ("Agreement") is made and entered into this 31st day of January, 2021 ("Effective Date") by and between the **Cleveland Municipal School District Board of Education** ("District"), a public school district and political subdivision under the laws of the State of Ohio, having an address of 1111 E. Superior Ave, 18th Floor, Cleveland, Ohio, 44114 and the **City of Cleveland**, as authorized by Ordinance Numbers _____, a political subdivision under the laws of the State of Ohio, having an address of 601 Lakeside Ave, Cleveland, Ohio 44114, its successors, assigns and transferees ("City").

RECITALS

WHEREAS, the District has determined it no longer needs the buildings identified on **Exhibit A** for school district purposes ("District Properties"); and

WHEREAS, the District Properties listed on **Exhibit A** may have economic redevelopment value; and

WHEREAS, the City of Cleveland desires to foster economic development within the City of Cleveland through the purchase of District Properties if they can find a suitable developer; and

WHEREAS, the District is currently offering the District Properties to Charter Schools as required by the Ohio Revised Code; and

WHEREAS, if the District Properties are not all sold to Charter Schools, the District would like to partner with the City and Community on the redevelopment of those remaining sites; and

WHEREAS, the City is seeking statements of qualification and proposals for the redevelopment of District Properties; and

WHEREAS, the District is offering the City an option to purchase the District Properties that remain after to facilitate the City's process for redevelopment.

NOW THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the District and City do hereby agree as follows:

ARTICLE I

TRANSFERS OF PROPERTY

1.1 Conveyance of District Property. At the City's request and direction, and upon the satisfaction of all other requirements and conditions described in this Agreement and any applicable City ordinances, rules, and regulations, state and federal laws, the District shall convey to the City the property being purchased from those offered as shown on **Exhibit A** (as reduced by those purchased by Charter Schools) attached hereto.

1.2 Transfers. Title shall transfer by recording of quit-claim deed(s).

1.3 Title Work - As to District Properties. The City or its designee may elect to cause a title insurance company of its selection ("Title Insurer") to examine title and perform a special tax search with respect to the property being transferred and issue a commitment ("binder") for the issuance of an owner's fee policy. If any encumbrances or title defects as to the property being transferred shall appear as exceptions on either binder or otherwise arise on or before the Closing (as defined below), and if either Party ("Objecting Party") notifies the other party ("Notified Party") in writing of its objection, the Notified Party shall have a period not exceeding thirty (30) days from receipt of such notice to remove such encumbrance or cure such defect at its own expense, although the Notified Party shall not be obligated to do so. If the Notified Party shall be unable or unwilling to remove any such encumbrance or cure any such defect within thirty (30) days, such Notified Party shall forthwith give written notice to the Objecting Party of its inability or unwillingness to cure such defect. Neither party need object to any monetary liens or encumbrances on the property being transferred to it, and the current owner shall remove same, at such current property owner's sole cost and expense, prior to Closing. If the Title Insurer reports that it is not willing and able to issue an Owner's Policy of Title Insurance (ALTA Form revised 10-17-05) without exceptions for any such encumbrances or defects which the Notified Party has been unable or unwilling to remove, the Objecting Party shall have the option, exercisable within thirty (30) days after receipt of such notice, to (a) accept title to the property being transferred to it, subject to said encumbrances and/or defects, or (b) terminate the Agreement by written notice to the Notified Party.

1.4 Closing, Costs and Prorations. All documents and funds necessary to complete these transactions shall be placed in escrow with the Title Insurer, or an agent thereof (the "Escrow Agent") no later than five (5) days prior to Closing. Closing of these transactions shall take place, provided all the terms and conditions of this Agreement have been fulfilled as provided in this Agreement, not later than five (5) days after the date all such documents have been deposited in escrow on such date as is mutually agreed to by the Parties, but in no case later than December 31, 2021 ("Closing Date"). All funds required for transfer of the Properties shall be deposited in escrow with the Escrow Agent not later than the Closing Date. This Agreement shall be considered the escrow instructions but shall be subject to the Escrow Agent's standard conditions of acceptance of escrow where not inconsistent with the terms and conditions of the Agreement. The standard conditions of acceptance of escrow shall be made a part of and incorporated into the Agreement by reference, and to the extent such incorporation by reference creates any inconsistencies or ambiguities, the terms and conditions of the Agreement shall

control. The Escrow Agent is hereby authorized to close the transactions and to make all prorations and allocations which, in accordance with the Agreement, are to be made between the parties. Escrow Agent shall cause Title Insurer to search the title to each property being transferred, and if and when Escrow Agent has received all funds and documents to be deposited in escrow, Escrow Agent shall cause the quit-claim Deeds to be filed for record, the Title Policies to be issued to the Parties and the funds disbursed in accordance with the Agreement.

The Escrow Agent shall prorate real estate taxes and assessments, both general and special, which are a lien but not yet due and payable, with respect to the Premises as of the conveyance date, based upon the latest available tax duplicate. The Escrow Agent shall distribute funds to the appropriate party, less any net prorations or credits, and shall provide to the Parties a copy of the closing statement. The Escrow Agent shall be responsible for compliance with the reporting requirements pursuant to Section 6045 of the Internal Revenue Code, including the preparation of Form 1099.

The Escrow Agent shall charge to the party receiving the property the following costs and expenses: (a) all transfer taxes required by law to be paid at the time of the filing of the Deeds; (b) the Escrow Fee, and (c) the cost of recording and filing the Deeds. The Escrow Agent shall charge to any party receiving a Title Policy the cost of its respective Title Policy.

1.5 Condition and Responsibility for Property. District Properties are being offered in the present "AS IS" condition. The Parties acknowledge that neither is relying upon any representations, warranties or other information given or supplied by the District with respect to environmental conditions existing on the District's Properties, or other matters in entering into this transaction or developing and constructing its property. District makes no covenant, representation or warranty as to the suitability of the District's Properties for any purposes whatsoever or as to the physical condition of the District's Properties.

1.6 Environmental Assessments. The City or its designee will have 180 days following the signing of this agreement to conduct such environmental tests, geotechnical tests and surveys as they deem appropriate and shall have a license to enter upon the Premises to do so. In the event, the City or its designee believes there is a condition on the property, they may elect to send a letter to the District and City stating its desire to terminate this Agreement as it applies to them.

ARTICLE II

DEVELOPMENT PLAN

2.1 Legal Descriptions; Surveys. The City or its designee shall be responsible for developing a legal description in a form approvable by the Cuyahoga County Engineer; and an ALTA survey, or such other form of survey acceptable to Cuyahoga County Engineer's Office. Provided, however, the Cuyahoga County Engineer's Office shall have the right to approve parcel configuration of any new sites. In the event such surveys show conditions unacceptable to the party for whom the survey was conducted, that party shall bear the cost and responsibility to remedy such conditions. Notwithstanding the same, each party shall reasonably cooperate with the other party to affect any survey remedies but not to the extent that the cooperating party incurs costs.

2.2 Coordination of Design. The City or its designee will work cooperatively with community leadership and the City of Cleveland on the design of the redeveloped District Property building and site.

2.3 Documents. Upon the request of any party, the District will provide public records that it has relating to the Properties being transferred.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 As to District. The District represents and warrants:

- A. The execution, delivery and performance of this Agreement and any related agreements do not or will not violate any provision of any existing law or regulation, order or decree of any court of governmental entity, and do not violate any provisions of, or constitute a default under, any agreement, or contract to which the District is a party, including, but not limited to, any agreements with any governmental agency. Further, all work which has been performed, or which will be performed, by the District in accordance with provisions of this Agreement shall be performed in full compliance with all Federal, State and local laws, rules, ordinances, orders and regulations.
- B. The District has the power to make, deliver and perform this Agreement and has taken, or will take, all necessary action to obtain all necessary or appropriate authorizations for the execution of this Agreement.

3.2 As to City. The City represents and warrants:

- A. The execution, delivery and performance of this Agreement and any related agreements do not or will not violate any provision of any existing law or regulation, order or decree of any court of governmental entity, and do not violate any provisions of, or constitute a default under, any agreement, or contract to which the City is a party, including, but not limited to, any agreements with any governmental agency. Further, all work which has been performed, or which will be performed, by the City in accordance with provisions of this Agreement shall be performed in full compliance with all Federal, State and local laws, rules, ordinances, orders and regulations.
- B. The City has the power to make, deliver and perform this Agreement and has taken, or will take, all necessary action to obtain all necessary or appropriate authorizations for the execution of this Agreement.

ARTICLE IV

COOPERATION BETWEEN THE PARTIES; EXECUTION OF OTHER DOCUMENTS

4.1 Cooperation The Parties acknowledge that the transactions provided for in this Agreement present a unique opportunity for a cooperative effort that can provide economic benefits to the Cleveland economy. Therefore, Parties intend to cooperate with one another fully by:

- A. Jointly participating in all public hearing processes necessary for any approval from the City of Cleveland or other governmental entity having jurisdiction over the redevelopment of District Properties or being conveyed to the respective parties;
- B. Making good faith efforts to adhere to timelines;
- C. Seeking creative solutions to problems;
- D. Executing in a timely manner all other documents and instruments necessary to fulfill the intent of the parties under this Agreement.

ARTICLE V

5.1. Disclaimer:

- A. EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, THE DISTRICT HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO OR CONCERNING THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE CITY OR ITS DESIGNEE MAY ELECT TO CONDUCT THEREON.
- B. THE CITY ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN UNIMPEDED OPPORTUNITY TO INSPECT THE PROPERTY, AND IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY IN ARRIVING AT ITS DECISION TO OBTAIN THE PROPERTY, AND THAT IT IS OBTAINING THE PROPERTY IN ITS PRESENT CONDITION, "AS IS, WHERE IS," AND THE DISTRICT HAS NO OBLIGATION TO CONSTRUCT ANY IMPROVEMENTS THEREON, OR TO PERFORM ANY OTHER ACT REGARDING THE PROPERTY.

- C. ANY FACTUAL INFORMATION SUCH AS PROPERTY DIMENSIONS, SQUARE FOOTAGE, OR SKETCHES SHOWN TO THE RESPECTIVE PARTY OR SET FORTH HEREIN ARE OR MAY BE APPROXIMATE. NO LIABILITY FOR ANY INACCURACIES, ERRORS OR OMISSIONS IS ASSUMED BY THE DISTRICT OR OTHER RESPECTIVE AGENTS.
- D. THE DISTRICT EXPRESSES NO EXPERTISE WITH RESPECT TO ENVIRONMENTAL MATTERS. PROPER INSPECTIONS OF THE PROPERTY BY QUALIFIED EXPERTS ARE AN ABSOLUTE NECESSITY TO DETERMINE WHETHER OR NOT THERE ARE ANY CURRENT OR POTENTIAL ENVIRONMENTAL CONCERNS RELATING TO THE PROPERTY. THE DISTRICT HAS NOT, NOR WILL IT MAKE, ANY REPRESENTATION, EITHER EXPRESSED OR IMPLIED, REGARDING THE EXISTENCE OR NON-EXISTENCE OF ANY SUCH ENVIRONMENTAL CONCERNS IN OR ON THE PROPERTY. PROBLEMS INVOLVING ENVIRONMENTAL CONCERNS CAN BE EXTREMELY COSTLY TO CORRECT. IT IS THE RESPONSIBILITY OF THE CITY OR ITS DESIGNEE TO RETAIN QUALIFIED EXPERTS TO DEAL WITH THE DETECTION AND CORRECTION OF SUCH MATTERS. THE PARTIES AGREE THE DISCLAIMERS SET FORTH IN PARAGRAPH 5.1 SHALL SURVIVE AND NOT MERGE WITH CLOSING OF THIS TRANSACTION.

ARTICLE VI

MISCELLANEOUS

6.1 Community Benefits Agreement. The District, City and/or its designee shall engage in good faith efforts to meet the goals of the Community Benefits Agreement attached hereto as Exhibit B.

6.2 Reports and Information. The District has various reports and information relating to the School District Properties that are available for review by interested parties at the School District's Ridge Road facility.

6.3 Notices. Any notice required or allowed to be sent under this Agreement shall be either (1) hand-delivered to the other party, and if so hand-delivered shall be effective on the day following its delivery, or (2) sent by regular United States mail, and if so sent shall be effective three (3) days following its mailing date.

Any notice to the District shall be addressed to:

Chief Executive Officer
Cleveland Municipal School District
Administration Building
1111 E. Superior Ave, 18th Floor
Cleveland, Ohio 44114

With a copy to: Chief Operating Officer
Cleveland Municipal School District
Administration Building
1111 E. Superior Ave, 19th Floor
Cleveland, Ohio 44114

Any notice to the City shall be addressed to:

Director of Mayor's Office of Capital Projects
601 Lakeside Avenue, Room 113
Cleveland, Ohio 44114

with a copy to: Director of Law
601 Lakeside Avenue, Room 106
Cleveland, OH 44114

6.4 Governing Law. This Agreement shall be construed under and governed by the laws of the State of Ohio.

6.5 Headings. The paragraph captions or headings contained in this Agreement are for convenience of reference only and are not to be used in the interpretation of this Agreement or as a description, expansion, modification, or limitation of the scope of the particular paragraphs to which they refer.

6.6 Integration. This Agreement contains the complete understanding and agreement of the Parties with respect to the subject matter of this Agreement, and all prior representations, negotiations, and understandings, written or oral, are superseded by and merged into this Agreement. The District shall not be liable or bound to the other Parties in any manner by any agreement, warranty, representation or guarantee with respect to the subject matter of this Agreement, except as specifically set forth in this Agreement or in any instrument executed in accordance with this Agreement. The introductory Recitals to this Agreement and Exhibits attached hereto are expressly incorporated in and made a part hereof by reference as substantive provisions of this Agreement.

6.7 Force Majeure. In the event of enforced delay in the performance by either party of obligations under this Agreement due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, fires, floods, epidemics, or severe weather, excluding labor strike, the time for

performance of such obligations shall be extended for the period of the enforced delays; provided that the party seeking the benefit of the provisions of this Section 6.5 shall within a reasonable period of time after the beginning of such enforced delay, have first notified the other parties in writing of the causes thereof and requested an extension for the period of the enforced delay.

No Party shall be required to perform any term, condition or covenant in this Agreement so long as such performance is prevented by any cause not reasonably within the control of the District, the City or its designee and which by the exercise of best efforts of each Party unable, wholly or in part, to prevent or overcome. This Section shall not operate to excuse either Party from performance of the terms and remedies set forth in this Agreement.

6.8 Approvals. All consents and approvals required or permitted under this Agreement shall not be unreasonably withheld or delayed, and in the case of the District, shall be given by the Chief Executive Officer or Chief Operating Officer or their successors in such offices and in the case of the City shall be given by the Director of Law. Each party shall be entitled to conclusively rely on the consent or approval of the other provided that the same is executed by the persons holding the offices or authorized to perform the duties of such offices specified herein.

6.9 Assignment. No Party shall make any assignment of its interest in this Agreement without the written consent of the other Parties.

6.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

6.11 Severability; Reformation. In the event any provision of this Agreement shall be found to be illegal or unenforceable by a court of competent jurisdiction, then in that event such illegal or unenforceable provision shall be severed from the balance of this Agreement and the balance of the Agreement shall be enforced in accordance with its terms. In the event the court deems the illegal or unenforceable provision to be not severable from the balance of this Agreement, then in that event the parties authorize the court to reform this Agreement in a manner that accomplishes the objectives of the parties as described herein.

6.12 Amendment. This Agreement may only be amended or changed by a writing signed by all parties herein.

IN WITNESS WHEREOF, the District and the City have executed this Agreement as of the Effective Date first written above.

**FOR THE CLEVELAND MUNICIPAL
SCHOOL DISTRICT BOARD OF
EDUCATION**

By: _____
Eric S. Gordon
Chief Executive Officer

By: _____
Anne E. Bingham
Chair of the Board of Education

By: _____
Derek M. Richey
Chief Financial Officer

FOR THE CITY OF CLEVELAND

By: _____

The legal form and correctness of this instrument is approved.

Barbara A. Langhenry, Director, Law

By: _____

Date: _____

EXHIBIT A

School Building	Property Address	Appraisal Date	Improved Property
Audubon	3055 Martin Luther King, Jr. Drive	9/4/2020	\$78,000 land value
Case	4050 Superior Avenue	8/17/2020	\$700,000
Empire	9113 Parmelee Avenue	9/4/2020	\$65,000 land value
Fullerton	5810 Fullerton Avenue	8/17/2020	\$310,000
Iowa - Maple	12510 Maple Avenue	8/17/2020	\$350,000
Martin Luther King, Jr. HS	Lexington Avenue & E. 71 st Street	8/17/2020	\$880,000
Mount Auburn	10110 Mount Auburn Avenue	9/4/2020	\$25,000 land value
Nathaniel Hawthorne	3575 W. 130th Street	9/9/2020	\$45,000
Paul Revere	10706 Sandusky Avenue	9/4/2020	\$85,000
Central School	2199 E. 40th Street	9/4/2020	\$150,000
Willson	1625 E 55 th Street	8/17/2020	\$175,000 land value
Vacant Property			
Charles Lake	9201 Hillock Avenue	11/11/2020	\$185,000
Giddings	2250 E. 71 st Street	1/6/2021	\$49,000
John D. Rockefeller	5815 Whittier Avenue	11/11/2020	\$160,000
John W. Raper	1601 E. 85 th Street	1/6/2021	\$155,000
Mound	5405 Mound Avenue	1/6/2021	\$38,000
Mt. Pleasant	11617 Union Avenue	1/6/2021	\$150,000
Stephen Howe	1000 Lakeview Road	1/6/2021	\$120,000

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E